

(1) "Malfunctions void all prizes and plays" or equivalent; and

(2) "Actual Prizes Determined by Bingo [or other applicable Class II game] Play. Other Displays for Entertainment Only." or equivalent.

§ 547.17 How does a tribal gaming regulatory authority apply for a variance from these standards?

(a) *Tribal Gaming Regulatory Authority approval.* (1) A tribal gaming regulatory authority may approve a variance from the requirements of this part if it has determined that the variance will achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the tribal gaming regulatory authority approves a variance, it shall submit to the Chairman within 30 days, a detailed report, which shall include the following:

(i) An explanation of how the variance achieves a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace; and

(ii) The variance as granted and the record on which it is based.

(3) In the event that the tribal gaming regulatory authority or the tribe's government chooses to submit a variance request directly to the Chairman for joint government to government review, the tribal gaming regulatory authority or tribal government may do so without the approval requirement set forth in paragraph (a) (1) of this section.

(b) *Chairman Review.* (1) The Chairman may approve or object to a variance granted by a tribal gaming regulatory authority.

(2) Any objection by the Chairman shall be in written form with an explanation why the variance as approved by the tribal gaming regulatory authority does not provide a level of security or integrity sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Chairman fails to approve or object in writing within 60 days after the date of receipt of a complete submission, the variance shall be considered approved by the Chairman. The Chairman and the tribal gaming regu-

latory authority may, by agreement, extend this deadline an additional 60 days.

(4) No variance may be implemented until approved by the tribal gaming regulatory authority pursuant to paragraph (a)(1) of this section or the Chairman has approved pursuant to paragraph (b)(1) of this section.

(c) *Commission Review.* Should the tribal gaming regulatory authority elect to maintain its approval after written objection by the Chairman, the tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:

(1) Within 60 days of receiving an objection, the tribal gaming regulatory authority shall file a written notice of appeal with the Commission that may include a request for an oral hearing or it may request that the matter be decided upon written submissions.

(2) Within 10 days after filing a notice of appeal the tribal gaming regulatory authority shall file a supplemental statement specifying the reasons why the tribal gaming regulatory authority believes the Chairman's objection should be reviewed, and shall include supporting documentation, if any.

(3) Failure to file an appeal or submit the supplemental statement within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(4) If an oral hearing is requested it shall take place within 30 days of the notice of appeal and a record shall be made.

(5) If the tribal gaming regulatory authority requests that the appeal be decided on the basis of written submission, the Commission shall issue a written decision within 30 days of receiving the supplemental statement.

(6) The Commission shall uphold the objection of the Chairman, only if, upon de novo review of the record upon which the Chairman's decision is based, the Commission determines that the variance approved by the tribal gaming regulatory authority does not achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.

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(7) The Commission shall issue a decision within 30 days of the oral hearing unless the tribal gaming regulatory authority elects to provide the Commission additional time, not to exceed an additional 30 days, to issue a decision. In the absence of a decision by the Commission within the time pro-

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vided, the decision of the tribal gaming regulatory authority shall be deemed affirmed.

(8) The Commission's decision shall constitute final agency action.

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